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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Hiroyuki Hanao

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FRISHAUF, HOLTZ, GOODMAN & CHICK, PC
220 Fifth Avenue
16TH Floor
NEW YORK, NY 10001-7708

EXAMINER

REICHLE, KARIN M

ART UNIT

PAPER NUMBER

3761

MAIL DATE

DELIVERY MODE

01/06/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/522,961	Applicant(s) HANA O ET AL.	
	Examiner Karin M. Reichle	Art Unit 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 October 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 4-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 4-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 January 2005 and 06 October 2008 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>12-22-08</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. The following action is based on the drawings and remarks filed October 25, 2007, the remarks of February 15, 2008 and the response of October 6, 2008.

Specification

Drawings

2. The drawings were received on 10-25-07. These drawings, i.e. sheets 1-2 and 6, are approved. However, see following discussion.

3. The drawings are objected to because the text in Figures 7A-C should still be avoided, i.e. A1-2, B1-2 and C1-3 should be textually described and referenced by such designation. In Figures 2-3, the combination should be designated by the numeral 3. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be

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labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Description

4. 35 U.S.C. 112, first paragraph, requires the specification to be written in "full, clear, concise, and exact terms." The specification is replete with terms which are not clear, concise and exact. The specification should be revised carefully in order to comply with 35 U.S.C. 112, first paragraph. Examples of some unclear, inexact or verbose terms used in the specification are: page 2, first full paragraph, second, first sentence thereof, and page 1, third full paragraph

5. The disclosure is objected to because of the following informalities: 1) On page 14, , in the added paragraph, lines 1-2, "An absorbent... in" should be --In-- and on line 3, "wherein" should be deleted to avoid confusion as to whether the properties 1)-3) in the preceding paragraph are those of the super absorbent alone or of the absorbent body. Appropriate correction is required.

Claim Language Interpretation

6. It is noted that claim 4 is a product by process claim, see MPEP 2113, i.e. "[E]ven though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious

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from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process.” In re Thorpe, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985) (citations omitted). The end product of claim 4 is considered to be a topsheet including a non-woven fabric which includes at least a hydrophilic portion. Claim 5 as interpreted recites the absorption rate, the absorption capacity and the moisture blocking value of the super absorbent polymer as determined by the procedures set forth on 14-17 of the instant application, and thus prior to incorporation in the article. It is noted that the claimed invention is the article not the superabsorbent polymer by itself. It is also noted that the chemical composition of the superabsorbent polymer in the article has not been claimed.

Claim Rejections - 35 USC § 102

7. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

8. Claims 1, 4, 8, and 13-14 are rejected under 35 U.S.C. 102(b) as being anticipated by the Procter and Gamble Co., PCT ‘877.

Claim 1: See Claim Language Interpretation section supra, hereinafter also referred to as CLI, and ‘877, esp. at the abstract, page 1, first full paragraph, page 3, second to last full paragraph, the paragraph bridging pages 3-4, page 4, first full paragraph, Figure 1, page 5, line 14-page 6, line 4, page 6, line 16-page 18, line 16 and page 23, lines 1-2 and thereby, also PCT ‘368, ‘597, ‘592, PCT ‘393, ‘803, ‘278 and PCT ‘669, i.e. ‘877 teaches an absorbent article comprising an absorbent body, i.e. the at least one absorbent structure of 28, e.g., page 17, last paragraph of ‘877, including comprising a pulp fiber and a super absorbent polymer, see cited

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portions of '877 and thereby, '368 and '597, e.g. page 13, last full paragraph, first sentence thereof, of '877, and a top sheet, the core wrap web of 28, e.g., page 17, last paragraph again, which is liquid permeable and includes a non-woven fabric covering the absorbent body. '877 further teaches a liquid permeable upper sheet, e.g. 24, a liquid impermeable lower sheet, 26 and the topsheet and absorbent body situated therebetween, see, e.g., Figure 1 of '877. '877 further teaches the superabsorbent content is not less than 55% by weight at least with "specific specificity", see MPEP 2131.03, I and II, and '877 at, e.g., the paragraph bridging pages 3-4. '877 also teaches the top sheet non-woven fabric having a fiber thickness of not more than 2.0 denier (1.1 denier is equal to 1 dTex), see, e.g., the paragraph bridging pages 3-4 again, with "sufficient specificity" and a basis weight of not less than 10g/m², see, e.g., page 9, second to last full paragraph and thereby, '393 at, e.g., Table 1, and page 11, second thru fourth full paragraphs, with "specific specificity". The claim also requires a wet strength of the non-woven fabric be not less than not less than 300g/25mm, i.e. 300g/ 2.5cm or 300g/in. It is noted that the claim does not specify in which direction such strength is measured, i.e. machine or cross. While '877 does not explicitly teach such range of wet strengths as claimed, i.e. a range of wet strength with the dimension of g/2.5 cm, it does teach the topsheet non-woven fabric having the same fiber thickness, basis weight and being a spunbonded and/or meltblown nonwoven as claimed and/or disclosed, see the paragraph bridging pages 10-11 of the instant application, as well as some wet strength, i.e. all materials have a wet strength. Therefore, it is the Examiner's first position that there is sufficient factual evidence for one to conclude that such topsheet of '877 inherently includes a wet strength as claimed when tested in a manner similar to the claimed topsheet. See MPEP 2112.01. See also the discussion of these claims with respect to '877, *infra*.

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Claim 4: See, e.g., cited portions of '877, e.g. page 11, fourth full paragraph and page 12, third full paragraph, and the Claim Language Interpretation section *supra*, i.e. the topsheet of '877 includes a non-woven with at least a portion thereof which is hydrophilic.

Claim 8: The top sheet is conterminous with the absorbent body, see, e.g. page 12, third full paragraph.

Claim 13: The absorbent article of further comprises water-repellent non-woven fabrics for forming three- dimensional gathers arranged on the liquid-permeable upper sheet at side edge portions of the absorbent body, see, e.g., Figure 1 and page 17, first full paragraph of '877 and thereby, e.g. '278 at, e.g., the Figures and col. 10, lines 47-55.

Claim 14: The liquid-permeable upper sheet and the liquid-impermeable lower sheet are both in contact with the top sheet, see discussion of claim 8 and page 12, first full paragraph and Figure 1 of '877 and PCT '669 at, e.g., Figures 1 and 3 and page 22, lines 20-22 and page 24, lines 23-26.

Claim Rejections - 35 USC § 103

9. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

10. Claims 1, 7-8 and 13-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over the Procter and Gamble Co., PCT '877, in view of Abuto '592.

Claim 1: See the Examiner's first position set forth in paragraph 8 *supra*. See cited portions of '877 as well as page 2, third full paragraph, i.e. containment is desired, and col. 2, lines 1-5, col. 5, lines 20-27 and Examples of '592, i.e. nonwoven sheets used as a core wrap

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include a wet strength as claimed to provide a sheet which does not tear, i.e. contains. Therefore, i.e. the Examiner's second position, to employ a wet strength as claimed with the '877 top sheet, if not already, would be obvious to one of ordinary skill in the art in view of the teachings of '592 due to the recognition that such a wet strength in such a nonwoven sheet which would provide a top sheet/core wrap sheet which does not tear and the desirability of structural integrity in the top sheet of '877 as evidenced by, e.g., the portions cited supra.

Claims 4, 8 and 13-14: See discussion supra in paragraph 8.

Claim 7: This claim requires the top sheet be a single sheet having an overlapping portion. See '877 at the portions cited supra, e.g. pages 11-12 and page 9. While '877 teaches the top sheet enclosing the absorbent body and incorporates tests of '592, it does not clearly teach the claimed structure. See however Figures 2-3 and col. 6, lines 15-40 of '592. Therefore, to employ a top sheet which is a single layer having an overlapping portion as taught by '592 on '877 would be obvious to one of ordinary skill in the art in view of the recognition that such would enclose the absorbent body thereof and the desire of '877 to do so.

11. Claims 5-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over the Procter and Gamble Co., PCT '877, alone, or, in the alternative, in view of Abuto '592.

Claim 5: See discussion of claims in paragraphs 8 and 10 supra, and the Claim Language Interpretation section supra, i.e. the properties claimed in this claims are those of the superabsorbent alone used to make the article not those of the article. While '877 does not teach such specific properties of the superabsorbent as tested according to the instant specification, i.e. the absorption capability conditions of an absorption speed of 30cc of artificial urine of 50 seconds or less, an absorbed amount of artificial urine under a pressure of 20g/cm² of 28cc/g or

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more, and a moisture absorbing blocking rate of 50% or less as tested according to the instant specification, it does teach superabsorbent(s) having the same composition as disclosed on page 10, last full paragraph of the instant application, see, e.g., ‘877 at the portions cited supra and thereby, e.g., ‘597 at col. 7, lines 6-22, and such superabsorbents having certain performance characteristics including rate of absorption, absorbed amount, etc. which are dependent upon the type of superabsorbent used, see, e.g., the portions of ‘877 cited supra, and the ability to be uniformly dispersed, see, e.g., page 23, lines 1-2 (Note the paragraph bridging pages 16-17 of the instant application), and thereby, not only the general conditions as claimed, as best understood, and/or disclosed, i.e. the combination of a fabric with fiber thickness, basis weight and wet strength and an absorbent body with a superabsorbent/pulp ratio, but also that such capabilities are result effect variables, i.e. a variable which achieves a recognized result, i.e. the desired performance characteristics, see MPEP 2144.05 again. Furthermore, where the general conditions of a claim are disclosed in the prior art, as here, it is not inventive to discover the optimum or workable ranges by routine experimentation, if the ‘877 superabsorbent does not already include such capabilities when tested in a manner similar to Applicant’s superabsorbent.

In re Aller, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955).

Claim 6: See, e.g., the paragraph bridging pages 6-7 of ‘877 and Figures 9-10 of ‘368, i.e. a layer/structure of the pulp fiber and a mixed layer/structure of the pulp fiber and the superabsorbent polymer.

12. Claims 9-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over the Procter and Gamble Co., PCT ‘877, alone, or, in the alternative, in view of Abuto ‘592 and further in view of Pieniak et al ‘423 and Dobrin ‘750.

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These claims require an outer layer non-woven fabric arranged alongside the liquid-impermeable lower sheet on an opposite side from the top sheet and absorbent body (claim 9), and the liquid-impermeable lower sheet in contact with the outer layer non-woven fabric alone (claim 12) or in combination with the liquid-permeable upper sheet partly in contact with the outer layer non-woven fabric (claims 10 and 11). While ‘877 at, e.g., page 18, second full paragraph, last sentence, and ‘669, incorporated by ‘877, at, e.g., page 23, first full paragraph, teach backsheets of composite materials, such structure is not explicitly taught. However, see ‘423 at the Figures and col. 2, lines 12-17 and 32-42 and ‘750 at the Figures and col. 1, lines 5-8 and 50-63. To employ an outer layer non-woven fabric arranged alongside the liquid-impermeable lower sheet on an opposite side from the top sheet and absorbent body, the liquid-impermeable lower sheet in contact with the outer layer non-woven fabric and the liquid-permeable upper sheet partly in contact with the outer layer non-woven fabric as taught by ‘423 and ‘750, i.e. a composite backsheet, on the ‘877 device would be obvious to one of ordinary skill in the art in view of the recognition that such would improve the comfort of the article while maintaining absorbency and the desire of such and composite material backsheets by ‘877.

Response to Arguments

13. Applicant’s remarks have been carefully considered but are either considered moot in that the issue discussed has not been repeated or deemed not persuasive for the reasons set forth *supra*.

Conclusion

14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any new grounds of rejection were necessitated by the amendments to claims 1 and 6 and the addition of claims 7-14.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karin M. Reichle whose telephone number is (571) 272-4936. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Karin M. Reichle/
Primary Examiner, Art Unit 3761

KMR
January 1, 2009